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SCHEDULES.

FOURTH SCHEDULE

Sections 20, 22.

ADAPTATIONS OF INCOME TAX PROVISIONS AS TO COMPUTATION OF PROFITS FOR PURPOSE OF NATIONAL DEFENCE CONTRIBUTION

- 1 The profits shall be taken to be the actual profits arising in the chargeable accounting period; and the principles of computing profits by reference to any other period and, save as provided in the next following paragraph, of allowing losses sustained in any other period to be carried forward, shall not be followed.
- 2 (1) Where a person carrying on a trade or business either solely or in partnership has, before the beginning of the first of the relevant accounting periods, sustained a loss (as computed for income tax purposes) in the trade or business, he may claim that so much of that loss shall be carried forward and deducted from or set off against the profits arising from the trade or business in any of the relevant accounting periods as could, under section thirty-three of the Finance Act, 1926, as amended by section nineteen of the Finance Act, 1932, be carried forward and deducted from or set off against the assessable income tax profits of the trade or business for the year of assessment corresponding to that accounting period :

Provided that, in ascertaining the amount (if any) that could be so carried forward and deducted from or set off against assessable income tax profits for a year of assessment corresponding to an accounting period—

- (a) the amount of the assessable income tax profits for that year shall be taken to be equal to the amount of the profits arising in that accounting period (computed in like manner as profits arising in a chargeable accounting period are computed for the purpose of the national defence contribution but before making any deduction for wear and tear under the next following paragraph);
 - (b) the amount of the assessable income tax profits for any previous year of assessment corresponding to a previous relevant accounting period shall be taken to be equal to the amount of the profits (computed as aforesaid) arising in that previous accounting period; and
 - (c) the amount of the deduction (if any) to be made from the assessable income tax profits under Rule 6 of the Rules applicable to Cases I and II of Schedule D for any year of assessment corresponding to a relevant accounting period shall be taken to be equal to the amount which, under the provisions of sub-paragraph (1) of the next following paragraph, falls to be deducted in computing the amount of the profits arising in that accounting period.
- (2) Where a person carrying on a trade or business either solely or in partnership has, in any relevant accounting period, sustained a loss in the trade or business (to be computed in like manner as profits arising in a chargeable accounting period are computed for the purpose of the national defence contribution) he may claim that that loss shall be carried forward and, as far as may be, deducted from or set off against the profits arising from the trade or business in the next relevant accounting period and, if and so far as it exceeds the profits so arising in that period, against the profits so arising in the next such period, and so on.

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In the application of this sub-paragraph to a loss sustained by a partner in a partnership, references to losses or profits shall be construed as references to that partner's share in those losses or profits.

- (3) For the purpose of this paragraph—
- (a) the expression " assessable income tax profits " in relation to any year of assessment means the profits or gains of the trade or business assessable to income tax under Schedule D for that year;
 - (b) the expression " relevant accounting period " means any accounting period falling wholly or partly within the five years beginning on the sixth day of April, nineteen hundred and thirty-seven;
 - (c) the year of assessment following that in which an accounting period ends shall be deemed to correspond to that accounting period.
- 3 (1) There may be deducted in respect of any accounting period a sum (ascertained on the like basis as the amount of a deduction for wear and tear is ascertained under Rule 6 of the Rules applicable to Cases I and II of Schedule D) which represents the diminution in value by reason of wear and tear during that period of any plant or machinery in respect of which a deduction could be made under the said Rule 6, plus ten per cent. of that sum. '

- (2) Without prejudice to the foregoing provisions of this paragraph, there may, in the case of the first chargeable accounting period, be deducted any sum which, under paragraph (3) of the said Rule 6, falls to be added to the amount of the deduction for wear and tear to be made under that Rule in charging the profits or gains of the trade or business to income tax for the year 1937-1938 :

Provided that, if the amount of the deduction falling to be made under this sub-paragraph exceeds the amount of profits arising from the trade or business in the first chargeable accounting period, the excess shall, in lieu of being deducted in that chargeable accounting period, be deducted in the second chargeable accounting period if and in so far as there are profits arising in that period, and so on.

- 4 The principles of the Income Tax Acts under which deductions are not allowed for interest, annuities or other annual payments payable out of the profits, or for royalties, or (in certain cases) for rent, and under which the annual value of lands, tenements, hereditaments or heritages occupied for the purpose of a trade or business is excluded, and under which a deduction may be allowed in respect of such annual value, shall not be followed :

Provided that nothing in this paragraph shall authorise any deduction in respect of—

- (a) any payment of dividend or distribution of profits; or
- (b) any interest, annuity or other annual payment paid to any person carrying on the trade or business, or any royalty or rent so paid;

and, for the purpose of paragraph (b) of this proviso, where the trade or business is carried on by a company the directors whereof have a controlling interest therein, the directors shall be deemed to be carrying on the trade or business.

- 5 The provisions of subsection (4) of section twenty-seven of the Finance Act, 1920 (which disallows deductions on account of the payment of dominion income tax) shall not apply.

- 6 Where, in respect of any profits arising from a trade or business, relief from income tax chargeable in the United Kingdom is granted by virtue of arrangements with

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the Government of any other country, being arrangements which for the time being have effect either—

- (a) under section eighteen of the Finance Act, 1923 (which as amended by section thirty-one of the Finance Act 1924, and section nine of the Finance Act, 1931, provides for the relief of shipping and air transport from double taxation); or
- (b) under section seventeen of the Finance Act, 1930 (which provides for the relief of certain agencies from double taxation);

those profits shall not be included in the profits arising from that trade or business, if and so long as the profits of trades or businesses which, by virtue of those arrangements, are relieved from income tax chargeable in that other country, are relieved from all taxes chargeable in that other country on the profits of trades or businesses.

7 Income received from investments or other property shall be included in the profits in the cases and to the extent provided in this paragraph, and not otherwise—

- (a) in the case of the business of a building society, or a banking business, assurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property except:—
 - (i) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on a trade or business to which the section of this Act charging the national defence contribution applies; and
 - (ii) income to which the persons carrying on the trade or business are not beneficially entitled;
- (b) in the case of any other trade or business, being a trade or business carried on by a body corporate, the profits shall include all income received by way of dividend or distribution of profits from any other body corporate in which the first-mentioned body corporate has a controlling interest and which is not liable to be assessed to the national defence contribution:

Provided that the profits of a body corporate which, either alone or in conjunction with any statutory undertakers, has a controlling interest in any other body corporate, being statutory undertakers, shall not in any case include any income received from that other body corporate.

8 Subject to the provisions of the last foregoing paragraph, the profits shall include all such income arising from the trade or business as is chargeable to income tax under Case I of Schedule D, or would be so chargeable, if the profits of the trade or business were chargeable under that Case, except income which is, or would be, exempted from income tax by virtue of section thirty-nine of the Income Tax Act, 1918, or section thirty of the Finance Act, 1921.

9 No deduction shall be made on account of liability to pay or the payment of United Kingdom income tax or the national defence contribution.

10 No deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced the profits or created or increased a loss or would artificially reduce the profits or create or increase a loss.

11 In the case of a trade or business carried on in any chargeable accounting period by a company the directors whereof have a controlling interest therein, the deduction

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to be allowed in respect of the remuneration of the directors other than whole-time service directors shall not exceed fifteen per cent. of the profits arising from the trade or business in that period (computed before making any deduction in respect of the remuneration of the directors other than whole-time service directors), or fifteen hundred pounds, whichever is the greater, so, however, that the deduction shall in no case exceed fifteen thousand pounds:

Provided that in relation to a chargeable accounting period of less than twelve months any reference in this paragraph to fifteen hundred pounds or fifteen thousand pounds shall be construed as a reference to a sum which bears the same proportion to fifteen hundred pounds or fifteen thousand pounds, as the case may be, as the length of the period bears to twelve months.

- 12 (1) In the case of a trade or business carried on in any chargeable accounting period by an individual or individuals in partnership, he or they may claim that there shall be allowed as a deduction in respect of that period the greatest amount which could have been allowed as a deduction under the last foregoing paragraph in respect of the remuneration of the directors other than whole-time service directors, if the trade or business had been carried on in that period by a company the directors whereof had a controlling interest therein :

Provided that, where a deduction is made under this paragraph as respects any period, the profits arising from the trade or business in that period shall be chargeable to the national defence contribution at the rate applicable in the case of a trade or business carried on by a body corporate.

- (2) Any claim under this paragraph shall be made by notice in writing given to the Commissioners of Inland Revenue within one month from the end of the chargeable accounting period in question.
- 13 For the purpose of this Schedule—
- (a) the expression " company " means a company within the meaning of the Companies Act, 1929, or the Companies Act (Northern Ireland), 1932;
 - (b) the expression " director " has the same meaning as in section one hundred and forty-four of the Companies Act, 1929, except that it includes any person who—
 - (i) is a manager of the company or otherwise concerned in the management of the trade or business; and
 - (ii) is remunerated out of the funds of the trade or business; and
 - (iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company;
 - (c) the expression " whole-time service director " means a director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the . beneficial owner of more than five per cent. of the ordinary share capital of the company; and
 - (d) the expression " ordinary share capital " means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate or a rate fluctuating in accordance with the standard rate of income tax, but have no other right to share in the profits of the company.

- 14 Where the performance of a contract extends beyond the chargeable accounting period, there shall (unless the Commissioners of Inland Revenue owing to any

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special circumstances otherwise direct) be attributed to that period such proportion of the entire profit or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to that period, having regard to the extent to which the contract was performed in that period.